

December 16, 2004

Enrique Caballero
1250 West 60th Terrace
Hialeah, FL 33012

RE: REQUEST FOR ADVISORY OPINION 04-186

Dear Mr. Caballero:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on December 15, 2004 and rendered its opinion based on the facts stated in your request.

You requested an advisory opinion clarifying the restrictions and possible conflicts related to an outside employment opportunity. You are a Real Estate Officer in the New Markets Division of the Miami-Dade Housing Agency. New Markets manages and reviews only County-owned properties within the County's Infill program, not those that are privately owned properties within the program.

According to the facts submitted in your letter, you review County-owned lots to determine suitability for infill housing development plans. Your specific tasks include taking pictures of the various lots and maintaining the inventory; i.e., data entry. Subsequently, the Infill Housing Oversight Committee approves the lots, which are then prepared for bid or conveyance to affordable housing developers who have been approved for participation in the agency's infill housing program. Thereafter, you prepare the approved list of vacant lots to be entered into the database, which is approved and reviewed by your supervisor who reserves the lots for the approved developers in the program. You do not have the authority to designate lots for infill development or to determine which developer may acquire the lots.

Given that you have an active estate license, one of the developers, who has participated and may in the future participate, in this Infill Housing Program has offered you a part-time/contractual employment opportunity. The outside employment would entail assisting the developer in finding and purchasing vacant lots [not owned by the County] for private development and researching other real estate matters. Upon purchase of these private lots, the developer may then place these properties into the County's infill program. You indicate that you are not involved in this process, since your job duties pertain to County-owned properties.

Under the Conflict of Interest and Code of Ethics Ordinance, you may accept the employment offer. Section 2-11.1(j) "Conflicting employment prohibited" provides that,

No person included in the terms defined in subsections (b)(1) through (b)(6) shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties.

You research and review only those properties which are presently County-owned. Moreover, you indicate that you are not involved in the bid or conveyance of these infill properties or any other County properties. Also, you neither determine which private properties enter the infill program nor do you broker real estate transactions on behalf of the County. The developer selection process pertaining to County-owned property designated for infill development is administered by a separate division, of which you are not associated. Since the outside employment would entail only the research and sale of properties not owned or affiliated with the County, you may accept the outside employment subject to the following restrictions:

- No use of County resources or time in furtherance of the outside employment
- No disclosure of confidential information acquired through your official capacity in the County [Section 2-11.1 (h)]
- No use of your official position to secure special benefits or privileges for your outside employer, unless otherwise permitted [Section 2-11.1 (g)]

- No representations or appearances before any County board or agency on behalf of the developer with regard to matters connected to his outside employment capacity

In RQO 03-69, the Ethics Commission opined that a part owner of an affordable housing consulting firm could work as a Housing Contract Compliance Analyst with the City of Miami as long as she did not handle the administration or compliance of her firm's client housing contracts with the City.

Since your duties with the potential outside employment would not impair your independence in performing your official duties, you are permitted to engage in the employment provided you abide by the restrictions outlined above. Even though you do not exercise oversight or compliance over the developer and do not work, in any capacity, with the selection and management of the infill developers, given that the developer is part of the County's Infill Housing Program, you are strongly urged to be mindful of the above-mentioned restrictions in minimizing the appearance of impropriety.

Finally, you must obtain department director approval; and in accordance with Section 2-11.1 (k), you must report your outside employment income and file the required disclosure forms by July 1st of each year with the Department of Elections.

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director